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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,302	08/27/2003	David Baxter		5391

7590 11/02/2004  
Daniel J. Staudt  
105 Spring Creek Lane  
Winter Springs, FL 32708

EXAMINER

BARNEY, SETH E

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/649,302

Applicant(s)

BAXTER, DAVID

Examiner

Seth Barney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/27/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 10 is objected to because of the following informalities: Claim 10 is currently dependent upon itself and has been construed by the examiner to be dependent upon claim 8. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,406,966 to Lepkowski.

Regarding claim 1, Lepkowski discloses a gutter cleaning system (10) having a drainage channel (12), several orifices (16) along a gutter, a carrying apparatus (13), a system to pressurize and force (column 4 lines 20 to 23) a medium through the carrying means to the orifice, a controller (18, 51, 52) for controlling the flow of the medium through the carrying apparatus to the orifice into the gutter to remove debris. See column 4 lines 24 to 45.

Regarding claim 2, Lepkowski discloses more than one orifice that are disposed along the gutter to remove debris. See Figures 1 and 2.

Regarding claim 4, the medium of Lepkowski is a liquid. See column 4 line 11.

Regarding claim 5, the medium of Lepkowski is water. See column 4 line 11.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,406,966 to Lepkowski.

Lepkowski discloses that the orifices are preferably positioned to spray parallel to the gutter axis (see column 4 lines 9 to 13 and Figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the spray direction of the nozzles to appropriately spray the debris as necessary.

6. Claims 6-8, 10-13, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,406,966 to Lepkowski as applied to claim 1 above, and further in view of U.S. Patent No. 6,257,2674 to Sturman.

Regarding claims 6-8 and 10, Lepkowski does not disclose that the controller controls the frequency that the medium flows to the orifice based on a predetermined time interval. Sturman discloses a programmable electronic valve control system to control a valve assembly for periodic actuation. It would have been obvious to one

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having ordinary skill in the art at the time the invention was made to modify the gutter cleaning device of Lepkowski with the controller of Sturman in order to operate the cleaning device at predetermined time periods in order to automatically maintain a clean gutter.

Regarding claim 11, Lepkowski does not expressly disclose the pressure under which the water is delivered. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use water under a pressure between 20psi and 3500psi in order to successfully remove debris from the gutter depending on the amount of blockage.

Regarding claim 12, Lepkowski does not expressly disclose that the orifices have openings with a diameter and shape to provide a sufficient spray of water into the gutter to clear and flush out the gutter. The gutter-cleaning device of Lepkowski inherently has openings with a diameter and shape to provide a sufficient spray of water into the gutter to clear and flush out the gutter in order for the apparatus to appropriately operate.

Regarding claim 13, Lepkowski discloses the nozzles spray parallel to the longitudinal axis formed by the gutter. See column 4 lines 9 to 13 and Figure 2.

Regarding method claims 17-20, the when using the apparatus of Lepkowski as modified by Sturman all of the method steps are performed as set forth in the claims.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,406,966 to Lepkowski and U.S. Patent No. 6,257,2674 to Sturman as applied to claim 8 above, and further in view of U.S. Patent No. 6,446,302 to Kasper.

Lepkowski does not disclose a monitoring device to detect the debris in the gutter. Kasper discloses a cleaning machine having a sensor (1010) to detect debris and then send a signal to activate the cleaning spray. See column 2 lines 6 to 12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the gutter-cleaning device of Lepkowski with the sensor of Kasper in order to automatically activate the gutter-cleaning device when the gutter is dirty.

8. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,406,966 to Lepkowski and U.S. Patent No. 6,257,2674 to Sturman as applied to claim 8 above and further in view of U.S. Patent No. 6,766,560 to Murphy.

Regarding 14, Lepkowski does not disclose the use of air as the cleaning medium. Murphy discloses a gutter leaf blower using air to remove debris from a gutter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the gutter-cleaning device of Lepkowski with the leaf blower of Murphy in order to supply a cleaning alternative that doesn't waste water.

Regarding claim 15, the aforementioned claim 13 rejection is applicable.

Regarding claim 16, the aforementioned claim 12 rejection is applicable.

Regarding method claim 21, when using the apparatus of Lepkowski as modified by Sturman and Murphy all of the method steps are performed as set forth in the claims.

### **Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,727,350 to Marcella discloses a self-cleaning

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gutter. U.S. Patent No. 5,165,482 to Smagac discloses a fire deterrent system incorporated with a gutter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (703) 308-2603. The examiner can normally be reached on 7:30am-4:00pm (Mon-Fri).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (703)308-1272. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney  
Examiner  
Art Unit 3752

SB



David A. Scherbel  
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